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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Assignee's Docket No.: 8717.00)
Group Art Unit: 3622)
Serial No.: 09/826,680)
Examiner: Daniel Lastra)
Filing Date: April 5, 2001)
Title: Self Service Terminal)
_____)

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APPEAL BRIEF

A Summary of Argument Begins on Page 13

The fee for this Brief may be billed to Deposit Account
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1. REAL PARTY IN INTEREST

NCR Corporation.

2. RELATED APPEALS AND INTERFERENCES

None.

3. STATUS OF CLAIMS

Claims 16 - 32 are pending, rejected, and appealed.

Claims 1 - 15 are cancelled.

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4. STATUS OF AMENDMENTS

No Amendment-after-Final is submitted.

Appellant acknowledges the objection on page 2, section 3, of the Office Action, regarding "Presently Amendment" of claim 27. Appellant's records indicate that the descriptor of claim 27 is "presently amended," not "presently amendment." Consequently, since "presently" is a synonym of "currently," the descriptor actually says "currently amended."

Further, a Catch-22 arises. How is Appellant to correct this situation ? If a new amendment is submitted, the phrase "currently amended" is incorrect, because the content of claim 27 is not being changed.

Applicant requests the PTO to state what it wants.

5. SUMMARY OF CLAIMED SUBJECT MATTER

Summary

In brief, an Automated Teller Machine, ATM, presents advertising to customers on the video screen at the ATM. The ATM, or its owner, charges a fee to the supplier of the advertising, thereby enhancing revenue to the owner of the ATM.

Figure 1 of the Specification shows a collection of ATMs 20a - 20d. (Specification, page 10, lines 15 - 18.) Figure 2 shows ATM 20a, which can connect to a server 14 through an IP NETWORK 16. (Specification, page 10, line 26 - page 11, line 4.) Server 14 has

access to a database 18, as shown in Figure 5. Advertising is stored in database 18. (Specification, page 13, lines 9 - 12.)

When a customer executes a transaction at the ATM, during "dead time" advertising is retrieved from the database 18, and is displayed on the ATM. (Specification, page 15, lines 20 - 27.)

The Specification, page 16, line 8 et seq., provides details on how the advertising is retrieved.

In one form of the invention, a screening procedure exists, to prevent offensive advertising from being stored in database 18. (Specification, page 18, lines 5 - 13; page 3, lines 3 - 16.)

One benefit of the claimed system is that the advertisements are retrieved from a database. Thus, an advertiser who wishes to present an advertisement at an ATM need not be granted access to the ATM itself. Instead, the advertiser is granted access to the database, where he stores the advertisements, and the ATM obtains the advertising from the database. (Specification, page 1, lines 17 - 26; page 3, lines 2, 3; page 9, lines 3 - 6.)

**Concise Explanation of Independent Claims,
Identification of "Means" etc.**

Claim 16

Claim 16 is an apparatus claim, and recites an Automated Teller Machine, ATM, which displays advertising to customers. (Specification, or "Spec.," page 1, lines 3 - 6.)

The claim states that the ATM contains a cash dispenser and a display. (Spec., page 11, lines 11 - 13; Figure 3, elements 52 and 58.)

The claim also states that the ATM contains "means" for retrieving an advertisement from a database, and a "means" for displaying the advertisement on the claimed "display" while the customer performs a transaction.

(Spec., page 2, lines 9 - 13; Figure 1 shows a database 18 for storing advertisements: Spec., page 10, lines 13, 14. One example of the "means" for retrieving an advertisement can be found in component 36 in Figure 3, which is a web browser: Spec., page 11, lines 23 - 25. This component 36 can cooperate with component 44 in Figure 4 in performing this function: Spec., page 12, lines 14 - 17 and lines 22 - 24. Either or both components 38 and 36 in Figure 2 can perform the displaying operation: Spec., page 12, lines 1 - 5; page 15, lines 20 - end, which states that the ATm application 38 actuates the web browser 36 to display the advertising.)

Claim 18

Claim 18 states that a "web browser" is allocated screen space at predetermined times. Thus, a user can gain access to the Internet, using the web browser. (Figure 2 shows web browser 36; Specification, page 11, lines 23 - 25; Specification, page 12,

lines 1 - 5 states that the web browser is allocated space at specific times; Specification, page 15, lines 20 - 27 states that advertising is presented in this space. Figure 8 shows allocated space 134: Specification, page 16, lines 4 - 7.)

Claim 19

Claim 19 is a method claim, and recites a process wherein advertising is retrieved by an ATM from a database, and displayed to a customer.

Initially, the customer inserts an ID card, and a transaction is initiated. (Spec., page 15, lines 14 - 17; Figure 7, block 200.) That transaction may entail dispensing of cash. (Spec., page 15, lines 21 - 23; Figure 7, block 204.)

The ATM requests advertisements from a server. (Spec, page 15, lines 18, 19; Figure 7, block 202.) The server retrieves an advertisement from a database. (Spec., page 16, line 8 - page 18, line 4.)

The retrieved advertisement is displayed on the ATM display. (Spec., page 15, line 24 - page 16, line 1; Figure 7, blocks 206 - 210.)

Claim 20

Claim 20 recites a method of using a network for supplying an ATM with an advertisement for display by the ATM.

The ATM requests an advertisement from a server, and the request contains identification of the ATM. (Spec., page 16, lines 18 - 27; parameters 166 in Figure 10 identify the ATM.)

The server obtains an advertisement from a database. (Spec., page 16, line 8 - page 18, line 4.)

The retrieved advertisement is displayed on the ATM display. (Spec., page 15, line 24 - page 16, line 1; Figure 7, blocks 206 - 210.)

Claim 22

Claim 22 is an apparatus claim, and recites a system wherein an ATM displays advertising to customers.

The claim recites an ATM which can dispense cash to a customer. (Spec., page 11, lines 11 - 13; Figure 3, elements 52 and 58.)

The claim recites an advertisement database, for storing advertisements. (Spec., page 2, lines 9 - 13; Figure 1 shows a database 18 for storing advertisements: Spec., page 10, lines 13, 14.)

The claim recites a server which (1) receives a request from the ATM for an advertisement, (2) locates an advertisement in the database, and (3) sends the advertisement to the ATM. (Spec., page 16, line 8 - page 18, line 4; Figure 7 generally.)

Claim 26

Claim 26 is an apparatus claim, and recites a system wherein an ATM displays advertising to customers.

The claim recites a "means" for connecting to a **first server**, to authorize dispensing cash to a customer. (Spec., page 12, lines 1 - 5; element 38, Figure 2.)

The claim recites a "means" for connection to a **second server**, for retrieving an advertisement from the latter. (Elements 32 and 34 in Figure 2 provides one example of the "means". Spec., page 12, lines 14 - 17. Spec., page 6, lines 21 - 24.)

The claim recites "means" for displaying the advertisement to the customer. (Figure 2, element 36, a browser, plus the display 52 in Figure 3 provide one example of the "means." Spec., page 12, lines 1 - 3; page 15, lines 26, 27.)

Claim 27

Claim 27 recites a method of using an ATM, wherein advertising is stored in a database. An authorized customer of the ATM is allowed to store advertising in the database. The advertising is screened, to assure that it meets acceptance criteria, such as not being racially offensive. Each time the ATM accesses the database, a fee is charged.

Support for the recitations of claim 27 is found as follows.

27. A method of offsetting the cost of owning an automated teller machine (ATM) which can dispense cash in the form of paper money to an ATM customer conducting a cash dispense transaction at the ATM, the method comprising the steps of:

providing a database for storing advertisements; (Element 18 in Figures 1 and 5; Specification, page 13, lines 9 - 11.)

allowing an authorized ATM customer to access the database and to transmit an advertisement from an ATM to the database for storing therein; (Specification, page 4, lines 7 - 12; page 5, line 20 - line 6, line 17; page 14, lines 22 - 24; page 8, lines 3 - 7; page 13, lines 3 - 12).

screening the transmitted advertisement to ensure that it meets an acceptance criterion; (Specification, page 5, line 20 - line 6, line 17; page 15, lines 4 - 8)

storing the screened advertisement in a database entry associated with the ATM; (Specification, page 7, lines 8 - 10)

and

charging a fee to the ATM customer each time the advertisement is accessed by the ATM (Specification, page 8, lines 23, 24; page 17, lines 22, 23).

Claim 28

Claim 28 is an apparatus claim, reciting a database of advertising. ATMs can gain access to the database, to retrieve advertisements, and display the advertisements. "Display criteria," stored with the advertising, determine, for example, the

times when each piece of advertising should be displayed.

Support for the recitations of claim 28 is found as follows.

28. A network comprising:

a database of authorized advertisements, each advertisement having an associated display criteria; (Database 18 in Figures 1 and 5; Specification, page 13, lines 9 - 12; page 14, lines 5 - 13)

a plurality of automated teller machines (ATM) in which each ATM can dispense cash in the form of paper money to an ATM customer conducting a cash dispense transaction at the ATM, each ATM including means for requesting an authorized advertisement from the database; (ATMs 20a - 20d in Figure 1; Figure 3 shows ATM 20a: Specification page 11, line 7; page 16, lines 10 et seq.) and

a server interconnected to the plurality of the ATMs, the server including means for matching an authorized advertisement with each ATM based on the display criteria (Server 14, Figure 5; "calendar" is the "display criteria": Specification, page 15, lines 9 - 14; page 14, line 5 et seq.).

Claim 29

Claim 29 is a method claim, and recites a process wherein a "third party" supplies advertising to a database. ATMs gain access to the database, to retrieve advertising, which the ATMs then display. The advertising is screened for inappropriate content, and rejected if inappropriate. When the advertising is displayed by the ATM, a charge is levied against the third party.

More specifically, claim 29 recites providing a database for

storing advertising. Element 18 in Figures 1 and 5 represent such a database. (Spec., page 10, lines 13, 14.)

Claim 29 recites allowing a third party to store advertising within the database. (Spec., page 13, line 3 - page 15, line 3.)

Claim 29 recites screening the advertising-to-be-stored, and if the advertising fails to meet specified criteria, rejecting it. (Spec., page 5, lines 20 - 23; page 5, line 26 - page 6, line 11.) For example, a list of forbidden words exists. If the advertising contains one of the words, it is rejected. A computer program can determine whether a forbidden word is present. (Spec., page 5, line 26 - page 6, line 11.)

Claim 29 recites "associating display criteria with the stored advertisement." The Spec., page 14, line 22 - page 15, line 3 provides an example. For instance, certain words may, at one point in time, be politically incorrect. At a later time, a certain word may be acceptable. The Spec states that the list of words can be associated with the advertising, and can be changed.

Claim 29 recites transmitting advertising to an ATM. (Spec., page 17, lines 14, 15.)

Claim 29 recites applying a charge to the third party. (Spec., page 17, lines 22, 23.)

Claim 30

Claim 30 recites a system containing a group of ATMs, means

for storing advertising, means for "screening" (eg, vetting) the advertising, and only transmitting advertising to ATMs which passes the vetting.

More specifically, claim 30 recites a network of ATMs. (Figure 1 shows ATMs 20. Element 26 is a private network connecting the ATMs to their authorization center 22.)

Claim 30 recites "means" for storing advertising data. (Database 18 in Figures 1 and 5 stores advertising data: Spec., page 10, lines 13, 14.)

Claim 30 recites "means" for screening the advertising. (Spec., page 5, lines 20 - 23.)

Claim 30 recites "means" for applying "display criteria" to the advertising. (Spec., page 5, line 26 - page 6, line 11.)

As to the two preceding "means," the Specification, page 14, lines 17 - 19, states that servlets 120 and 122 in Figure 6 can transmit the submitted advertising to a person who performs screening. This provides an example of the "means for screening." Alternately, the Spec., page 18, lines 11 - 13, states that software can perform the screening, by looking for specific words.

As to the second "means," the "display criteria" can be a list of words, for example, or an excessive amount of skin tone in an image. Computer programs can apply the "display criteria." (Spec., page 18, lines 11 - 13; page 6, lines 3 - 11.)

Block 44, and its contents, in Figure 4 provide one example

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of a representation of the two "means."

Claim 30 recites "means" for transmitting the advertisements to an ATM. Element 14, and its contents, in Figures 2 and 5 provide one example of such a "means."

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 16 - 24, 26 - 28, and 30 - 32 are anticipated under 35 USC 102, based on the published US application of Drummond '888.

Whether claims 25 and 29 are obvious under 35 USC 103, based on Drummond '888 and Gupta.

Whether Drummond '888 is available as a reference.

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7. ARGUMENT

SUMMARY OF ARGUMENT

Drummond '888 Not Available as Reference

All rejections rely on Drummond '888, a published US application. Appellant's US filing date, as well as his foreign priority date, precedes the filing date of Drummond '888. Therefore, Drummond '888 is not available as a reference.

The Final Office Action, page 7, asserts that Drummond '888 is entitled to the filing date of his provisional application 60/149,765. However, that provisional was filed **five years prior** to Drummond '888. Thus, Drummond '888 cannot be entitled to the filing date of the provisional **directly**, because more than one year has elapsed between the filing of the provisional and the filing of Drummond '888.

It is possible that a chain of one or more applications may bridge this five-year gap. However, the PTO has not identified such a chain.

Further, even if Drummond '888 becomes entitled to the filing date of the provisional in question, the PTO must show that the **content** of Drummond '888, used to reject the claims (such as paragraph 116), **is present in the provisional**. That has not been done.

Therefore:

- 1) the PTO has not shown that Drummond '888

is entitled to the filing date of the provisional application in question, and

- 2) the PTO has not shown that the content of Drummond '888, which is used to reject the claims, is present in the provisional application in question.

Elements of Claim 29 not Found in Drummond '888

Claim 29 recites

- 1) providing a database of advertisements ("Recitation 1") and
- 2) allowing a "third party" access to the database, to supply advertisements ("Recitation 2").

In Drummond, an ATM visits web sites, and downloads web pages containing advertising. The PTO treats those web sites as showing Recitation 1, namely, the claimed providing of a database of advertisements.

However, in Drummond, it is clear that the **owner of the web site** supplies the advertising to **that same web site**. Thus, that owner **also** performs Recitation 2.

So, in Drummond, **the SAME PARTY** performs both Recitation 1 and 2.

Therefore, in Drummond, there is no "third party" present.

In the claim, the "third party" (which does Recitation 2) is **different from** the party which provides the database of advertisements (Recitation 1). Drummond does not show that different (third) party.

Consequently, even if Drummond is available as a reference, the two different parties recited are not found.

The PTO is apparently asserting that the "third party" is "third" with respect to the owner/operator of the ATM.

This applies to claim 27, as explained immediately below..

Claim 27
Claimed Parties not Found in Reference

POINT 1

Claim 27 recites

- 1) providing a database for storing advertisements ("Recitation 1") and
- 2) allowing a "customer" access to the database, to store advertisements in the database ("Recitation 2").

Under the preamble of claim 27, the "customer" is a customer in the usual sense: one who withdraws cash from the ATM.

Appellant points out that some agency must perform Recitation 1, namely, "providing a database." That agency is necessarily different from the "customer," and any contrary interpretation

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makes no sense.

In Drummond, an ATM visits web sites, and downloads web pages containing advertising. The PTO treats those web sites as showing Recitation 1, namely, the claimed providing of a database of advertisements.

However, in Drummond, it is clear that the **owner of the web site which is visited** supplies the advertising which is stored at that visited web site, and which is downloaded to the ATM. Thus, that owner performs Recitation 2.

Thus, in Drummond, **the SAME PARTY** performs both Recitation 1 and 2.

Therefore, in Drummond, the claimed two entities (the "customer" and the one "providing a database") are not present. In the claim, the "customer" (which performs Recitation 2) is **different from** the party/agency which provides the database of advertisements (Recitation 1).

Drummond does not show the claimed two parties.

Consequently, even if Drummond is available as a reference, the two different parties recited are not found.

POINT 2

This claim is fundamentally different from Drummond, even if Drummond is available as a reference.

The passages cited in Drummond to show the claim (paragraphs

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103, 116, 121, and 122) essentially state that Drummond's ATM can access web sites, obtain web pages, and display the web pages to customers.

However, claim 27 states that an **ATM customer** can transmit an advertisement **to a database** for storage. That means that the **customer** transmits the advertisement **to the database**. That is not shown in Drummond.

Further, the claim states that the advertisement is stored in a database entry "associated with the ATM." That is not seen in Drummond. (As to this recitation, the Specification states that each ATM has specific advertisements associated with it. Page 3, lines 3 - 5.)

Applicant points out that, in the claim, three particular claim-steps are not found in Drummond.

One, the "authorized ATM customer" transmits the advertisement to the database.

Two, the "screening" is done.

Three, after "screening," the advertisement is stored in "a database entry associated with the ATM."

That combination of three steps has not been found in Drummond.

Teaching in Obviousness Rejections is Invalid

The rationale for combining the two references in the obviousness rejection is that one desires to avoid offensive advertising at a public ATM.

Point 1

However, neither reference discusses this. The MPEP requires that this goal be found in the prior art.

Point 2

The PTO has not shown **how**, on the one hand, offensive advertising is avoided while, on the other hand, effective advertising is allowed. For example, should advertisements for Playboy magazine be allowed at ATMs ?

Thus, no expectation of success has been shown, as required by the MPEP.

Point 3

The references are contradictory. Drummond, paragraph 12, expressly states that he wants to provide a "wide range" of materials, from many different web sites. Gupta states that certain advertising should be suppressed.

Gupta's concept of censorship is contrary to Drummond's concept of a "wide range."

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Point 4

The stated goal is contrary to known prior-art principles. It is well known that offensive advertising is sometimes actively sought by advertisers. The obnoxious nature of the advertising causes the viewer to remember the advertising.

Thus, the teaching for combining the references is contrary to known prior art principles.

Remaining Claims

Similar points apply the remaining claims, as discussed below.

Comment

Not all points made in this Summary are elaborated below, because, for some points, no elaboration is seen as necessary.

END SUMMARY

ARGUMENT

**Argument re: Anticipation Rejection of Claims in Group 1
(Claims 16 - 24, 26 - 28, and 30 - 32)**

Claim 16

Claim 16 recites:

16. An automated teller machine (ATM)
. . . comprising:

. . .

means for accessing an advertisement
database to retrieve an authorized
advertisement associated with the ATM; and

means for incorporating the retrieved
advertisement in a screen for displaying on
the ATM display to allow the ATM customer to
view the screen while the ATM customer is
conducting the cash dispense transaction at
the ATM.

These two "means" have not been shown in a reference having an appropriate filing date. The PTO relies on a provisional application cited by Drummond, namely, 60/149,765. However, two problems arise here.

One is that the two "means" have not been shown in that provisional.

The second is that a five-year gap exists between the filing date of this provisional and Drummond '888. The PTO has shown no intervening applications which bridge this gap.

MPEP § 2131 states:

A claim is anticipated only **if each and every element** as set forth in the claim is found, either expressly or inherently described, **in a single prior art reference.**

Therefore,

- 1) the PTO has not shown that Drummond '888 is entitled to the filing date of the provisional application in question, and
- 2) the PTO has not shown that the content of Drummond '888, which is used to reject the claims, is present in the provisional application in question.

Claim 18

This claim states, speaking generally, that the ATM contains a browser which allocates screen space **at predetermined "allocation times."**

The Office Action cites paragraph 114 of Drummond as showing this. However, that paragraph 114 discusses creation of a display which is personalized for the customer, or otherwise contains content which is specific to the customer. The only discussion of timing in that paragraph is a statement that the personalized content may be selected based on "other factors such as the day of the week and time of day."

While exactly how the "other factors" can be used is not clear, perhaps Drummond intends to refer to something like the following. During business hours, the personalized content may offer the customer an application for a credit card. However, on Friday and Saturday evenings, perhaps no offer of a credit card is made.

In any case, Drummond's proposal of altering the personalized content based on day-and-time does not show the claimed recitation of using the web browser, as claimed, at "allocation times."

-- Drummond does not show a "browser" in the cited passage;

-- He does not show a "browser" used at "allocation times."

The preceding two elements have not been shown in Drummond.

Claim 20

Claim 20 recites:

20. A . . . method comprising the steps of:

. . . .

accessing an advertisement database to retrieve an authorized advertisement associated with that ATM; and

transmitting the retrieved advertisement to the ATM for displaying on the display at that ATM to allow the ATM customer to view the

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displayed advertisement while the ATM customer is conducting the cash dispense transaction at the ATM.

These two "means" have not been shown in a reference having an appropriate filing date. The PTO relies on a provisional application cited by Drummond, namely, 60/149,765. However, two problems arise here.

One is that the two processes ("accessing" and "transmitting") have not been shown in that provisional.

The second is that a five-year gap exists between the filing date of this provisional and Drummond '888. The PTO has shown no intervening applications which bridge this gap.

Claim 21

POINT 1

The claim recites recording ("logging") the number of times an advertisement database was accessed, and generating a bill accordingly.

As explained above, no advertising database has been shown in a usable reference. Thus, this claim element has not been shown in the prior art.

POINT 2

Drummond's paragraph 116 is cited to show the claimed billing.

However, that paragraph contains only two references to payment.

- One is a statement that the owner of a machine may "sell paid advertising."
- The second is this:

The operator of the machine . . .
may require payment from advertisers
for presenting the advertising
materials.

Neither reference shows the actual claim recitation. The claim states that a billing is generated, **based on the number of accesses to a database**. Even if the Drummond reference is available, the cited passage in it only refers to payment for advertising. That does not show, or imply, the **specific billing method** recited in the claim.

For example, in Drummond, an advertiser may pay \$ 1000 for the option to place ten advertisements at **any times he wants**, or pay a lesser sum if the ads are placed at times which are inconvenient to users (such as early in the morning). That does not show the claim recitation of billing based on the number of accesses to the database.

Claim 22

Claim 22 recites "a server interconnected to the ATM and for accessing the advertisement database in response to a request from

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the ATM."

At no location does the Final Office Action identify such a "server." Claim 22 is discussed on page 3, first five paragraphs, but no "server," as claimed, has been identified.

Claim 26

Claim 26 recites:

means for connecting to a first server to
authorize the cash dispense transaction;

means for connecting to a second server to
retrieve an authorized advertisement
associated with the ATM.

Thus, claim 26 recites two servers. One is, for example, the ordinary server used by ATMs, to authorize financial transactions. For instance, this would be a computer operated by a bank which owns the ATM.

The second server retrieves advertising for display at the ATM.

These two servers have not been shown in Drummond '888.

Claim 27

Claim 27 recites "screening" a submitted advertisement. Paragraphs 103, 121, and 122 of Drummond '888 are cited to show this. However, these paragraphs do not show the claim recitation.

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Drummond's paragraph 122 recites determining whether a "message" is "appropriate." However, the "message" is a computer signal to a cash dispenser in an ATM. The "appropriateness" is whether the amount of cash exceeds a limit. That does not correspond to the claim recitation.

Drummond's paragraph 121 merely states that advertising is retrieved from web sites, and presented to customers. That does not correspond to the claim recitation of "screening."

Drummond's paragraph 103 merely states that the customer's ATM card may contain personal information about the customer. Drummond uses that information to select advertising for presentation to the customer. That does not correspond to the claim recitation 'f screening advertising.

Regarding all three of the above paragraphs of Drummond, it could be argued that, insofar as Drummond selects advertising for presentation to the customer, he thereby rejects other advertising. Thus, the argument goes, "screening" occurs.

However, the claim does not recite mere rejection, for at least three reasons. One, the claim, and its parent claim, states that advertising which is not rejected is added to a "database." Two, **rejected** advertising (which was submitted) is not added to the "database." Submission-followed-by-rejection has not been shown in Drummond '888. Three, under the claims, material (eg, advertising) is withdrawn from the database and used in a specific

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way. That has not been shown in Drummond '888.

Claim 30

Claim 30 recites:

means for screening the advertisement data;

means for applying display criteria to the advertisement data; and

means for transmitting the advertisement data to one or more ATMs in accordance with the display criteria.

This claim is rejected by the first five paragraphs on page 3 of the Final Office Action. None of these paragraphs show these three "means." Nor have these three "means" been shown elsewhere in Drummond '888.

**Argument re: Obviousness Rejection of Group 2
(Claims 25 and 29)**

Claims 25 and 29 were rejected as obvious, based on Drummond '888 and Gupta.

No Expectation of Success Shown in Combination of References
And
Combination Renders Drummond Inoperative

POINT 1

No expectation of success has been shown, indicating that the

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combination of references actually works. MPEP § 706.02(j) states:

Contents of a 35 U.S.C. 103 Rejection

. . . .

To establish a prima facie case of obviousness, three basic criteria must be met.

. . . .

Second, there must be a reasonable expectation of success.

. . . .

The . . . reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure.

A basic problem with the combination of references is that it presupposes that, in Gupta, (1) a web site contains advertisements and (2) the web site, or its owner, can reject improper advertisements. (For example, a religious web site may reject advertisements containing nudity. Gupta: column 15, lines 50 - 55)

However, this pre-supposition is false. Gupta discusses an ISP (Internet Service Provider) which **adds advertisements** to web pages, when the web pages are delivered to Internet surfers. (See Abstract.)

(An ISP is the agency that an Internet user deals with in order to get access to the Internet. AOL is an example of an ISP.)

In essence, Gupta teaches an ISP which adds "pop-ups" to web pages. Assuming that Gupta obtains the advertising/pop-ups from

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web sites (see Abstract), any rejection of improper web sites is done by Gupta's ISP, because that ISP is the agency which adds the advertisements/Pop-ups to the web pages.

In Gupta, there is no rejection of advertisements from being stored in a database, as claimed.

Drummond, in paragraph 116, states that his terminal obtains advertising which is stored at web sites, and presents the advertising to a customer. But the Final Office Action admits that Drummond does not show rejecting advertisements from being stored in a database. (Final Action, page 5, beginning of last paragraph.)

Therefore, neither reference teaches rejecting advertisements submitted to a database.

From another point of view, the PTO has not explained how Drummond can visit web sites to obtain advertising, as Drummond teaches, if Drummond is modified by Gupta. Under the modification, Gupta's ISP adds advertising to a web page delivered to a user. Gupta states that the advertising can be obtained from a web site. (See Abstract.) But if the advertising is improper, Gupta will not add it.

Thus, Drummond's process of fetching the advertising from a web site is eliminated, in certain situations.

Thus, no expectation of success has been shown. The PTO has not shown how Drummond can achieve his goals, if modified by Gupta.

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For example, one goal of Drummond is to download advertising without restriction, and display it. (See paragraph 121.) Gupta is contrary. Gupta says that some advertising will not be displayed. Thus, Drummond is rendered inoperative to achieve his intended purpose. MPEP § 2143.01 states:

THE PROPOSED MODIFICATION CANNOT RENDER THE
PRIOR ART UNSATISFACTORY FOR ITS INTENDED
PURPOSE

If proposed modification would render the
prior art invention being modified
unsatisfactory for its intended purpose, then
there is no suggestion or motivation to make
the proposed modification.

POINT 2

In Drummond, the advertising is merely **one type of material** which his terminal obtains from web sites. He discusses other types of material, such as "stock market data." (Paragraph 116, first sentence.)

Drummond's advertising is a **subset** of the material generally which he obtains from web sites.

If Drummond is modified so that Gupta's system is used to deliver all such material to the customer, as the PTO proposes, then clearly there is no expectation of success, and Drummond is rendered inoperative. For example,

-- How does Gupta's ISP gain access to
accurate, current stock market reports ?

-- And where is the teaching for that ?

-- And why would Drummond want Gupta's ISP as an intermediary, when Drummond himself states that he gets the stock market data directly from a web site ?

If, to the contrary, Drummond is being modified so that (1) only the advertising is obtained from Gupta's ISP, and (2) the stock market data etc. is obtained as usual in Drummond, then a teaching is required for this selective modification. No teaching has been given.

References are Directly Contradictory

Drummond, paragraph 121, states that the materials which he retrieves "may be accessed from servers connected to the system anywhere, including servers connected to the Internet." He states that this provides the advantage of presenting a "wide range of materials to customers."

That is directly contrary to Gupta's notion of using an ISP to add advertising to web pages, and to suppress some advertising. The "wide range" is absent from Gupta.

Stated more simply, Gupta teaches censorship, while Drummond does not.

Claim Elements not Contained in the References

The claim recites, speaking generally, "screening" an advertisement, and rejecting it if inappropriate.

The Office Action cites Drummond's paragraphs 103, 121, and 122 to show this. However, these paragraphs do not show the claim recitations.

Drummond's paragraph 122 recites determining whether a "message" is "appropriate." However, the "message" is a computer signal to a cash dispenser in an ATM. The "appropriateness" is whether the amount of cash exceeds a limit. That does not correspond to the claim recitation.

Drummond's paragraph 121 merely states that advertising is retrieved from web sites, and presented to customers. That does not correspond to the claim recitation.

Drummond's paragraph 103 merely states that the customer's ATM card may contain personal information about the customer. Drummond uses that information to select advertising for presentation to the customer. That does not correspond to the claim recitation.

Regarding all three of the above paragraphs of Drummond, it could be argued that, insofar as Drummond selects advertising for presentation to the customer, he thereby rejects other advertising. However, the claim does not recite mere rejection.

One, the claim, and its parent claim, states that advertising which is not rejected is added to a "database." Two, rejected

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advertising (which was submitted) is not added to the "database."
Three, under the claims, material is withdrawn from the database
and used in a specific way, under the claim. These three claim
items are not found in the references.

Therefore, even if the references are combined, the claim is
not attained. MPEP § 2143.03 states:

To establish prima facie obviousness . . . **all
the claim limitations** must be taught or
suggested by the prior art.

No Valid Teaching Given for Combining References

The rationale for combining the references (Final Action,
beginning at bottom of page 5) is that "public ATM terminals would
screen and censor advertisements in order to avoid offending
customers" However, several problems exist in this
rationale.

PROBLEM 1

The concept that "public ATM terminals" should screen
advertising has not been shown in the prior art. As explained
above, in connection with Drummond's paragraphs 103, 121, and 122,
Drummond does not show such screening.

Gupta merely states that a religious web site may tell the
ISP **not do add** certain advertising to the web page. But there is

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no "public terminal" doing any "screening" in Gupta.

Screening by public terminals has not been shown in the prior art. Thus, the goal of the rationale has not been shown in the prior art.

MPEP § 706.02(j) states:

Contents of a 35 U.S.C. 103 Rejection

. . .
To establish a prima facie case of obviousness, three basic criteria must be met.

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.

. . .

The teaching or suggestion to make the claimed combination . . . must . . . be found in the prior art and not based on applicant's disclosure.

PROBLEM 2

The goal of the PTO's rationale is to prevent offense to customers. However, that goal has not been shown in either reference.

Appellant cannot find it in Drummond.

Gupta discusses suppression of some advertising, but plainly not because of the **customer**. In his example, a religious web site

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would suppress addition of pornographic advertising. (Column 15, lines 50 - 55.) But that suppression is plainly done because of the sensibilities of the **web site owner**, not the customer.

In fact, many customers would **like** that type of advertising, including some customers who visit religious web sites.

Therefore, the rationale's goal has not been shown in the references. MPEP § 706.02(j) states:

Contents of a 35 U.S.C. 103 Rejection

. . .
To establish a prima facie case of obviousness, three basic criteria must be met.

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.

. . .

The teaching or suggestion to make the claimed combination . . . must . . . be found in the prior art and not based on applicant's disclosure.

PROBLEM 3

The stated goal presumes that an ATM which presents advertising wants to suppress advertising which is offensive to the customer. As explained above, this goal has not been shown in the prior art.

Further, the Office Action apparently presumes that prevention

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of offense to customers is some type of universal goal which all advertisers desire, and thus this prevention is a natural goal to be sought by a person skilled in the art.

Appellant submits that this presumption is false in fact.

It is a well known tenet of advertising that "offense" to viewers is not necessarily avoided. In fact, **repetition** of obnoxious/boring/banal advertisements is sometimes seen as a positive goal because it drives home the message. The viewer remembers an advertisement because of the obnoxious nature of the advertising.

Therefore, Appellant submits that the goal of avoiding offense to customers cannot be taken as a goal for combining the references, since this goal has not been shown in the prior art, and "offense" is sometimes a positive goal sought by advertisers.

PROBLEM 4

The references are contradictory as to the rationale.

Gupta may be consistent with the rationale, in that he suppresses some type of advertising. But, as explained above in connection with Drummond's paragraph 121, Drummond states that he wants to present a "wide range" of materials to the customers. That goal is contrary to the PTO's stated goal of censorship.

PROBLEM 5

No logical connection has been shown which leads from the stated goal to the claimed invention. There are hundreds of approaches to accomplish this goal (avoiding offense to customers). Most, if not all, do not show the claim.

For example, an advertiser may

- (1) design several different types of advertising,
- (2) present them to focus groups, and then
- (3) select the advertising which the focus groups find least irritating.

This approach would reduce offense to customers.

But this approach does not show the claim. One reason is that no "acceptance criteria" are present.

Therefore, the stated goal of reducing offense to customers does not necessarily lead to the claimed invention. A line of reasoning is required showing that, given the goal of suppressing offense to customers, one would logically reach the claimed invention, as opposed to other approaches.

PROBLEM 6

The stated goal is to prevent offense to customers at ATMs. As explained above, this goal has not been shown in the prior art.

Further, the rationale does not state **who** has this stated

goal, such as

- (1) the seller of the product to which the advertising relates,
- (2) the designer of the ATM system,
- (3) the owner of the ATM, or
- (4) somebody else.

Appellant submits that, until the holder of the goal is identified, the rationale cannot be used.

For example, it seems axiomatic that the seller of the product being advertised knows best what content would offend his customers. Given that, why should the owner of the ATM care about the content of the advertising ?

Thus, as this example shows, an explanation is required as to (1) **which party** in an ATM system has the goal of avoidance of offense to customers, and (2) how that party's goal leads to the claimed invention.

Until this is shown, Appellant submits that no motivation exists for avoiding offense to customers.

As a specific example, assuming that offense to customers is to be avoided (and this has not been shown in the prior art), the seller of a product may be assumed to know what type of advertising will offend his customers. Therefore, why would the owner of an ATM become involved in screening that advertising, since the ATM is simply a "common carrier." And why would the seller allow the

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ATM to even become involved ?

Therefore, again, Appellant points out that the sole rationale for combining the references is to avoid offense to customers.

PROBLEM 7

The PTO has not shown an effective system which (1) reduces or eliminates offense to customers while (2) presenting effective advertising. Thus, no expectation of success, as required, has been shown.

For example, assume that Playboy magazine wants to advertise on the ATM in the combination of references. Some people are offended by that magazine, others are not, and, as far as the undersigned attorney knows, the magazine is legal in all 50 states.

Where, in the combination of references, can one determine whether Playboy will be allowed advertise ? Nowhere.

Therefore, Appellant submits that, while Gupta in the combined references may suggest suppression of certain advertising, no teaching is present which explains what criteria are used to **accept** advertising.

Claim 29

The preceding applies to both claims 25 and 29.

In addition, claim 29 recites

applying a charge to an account associated with the third party, **wherein all steps are undertaken by a single entity and its agents.**

Appellant points out that, under the claim, because of the "wherein" clause, a "single entity and its agents"

- maintains a "database,"
- allows access to the "database" by the "third party."
- stores advertising in the "database" which is submitted by the "third party,"
- rejects some of the advertising submitted,

These actions, by "single entity and its agents," are not found in either reference. Drummond explicitly states that he fetches materials from web sites which he does not control. (Paragraph 121). And Gupta is not cited to show these elements, except the rejection.

**Rebuttal of PTO's Response to Arguments
(Final Action, Beginning on page 7)**

Point 1

The availability of Drummond as a reference has been discussed above.

Point 2

As to the Final Action, page 7, last paragraph, the claim(s)

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recite a "browser" which is made available to a customer. Drummond's paragraphs 9 and 14 discuss a browser which is used by his terminal. (Presumably, he uses the browser because it is a perfected, off-the-shelf piece of software which can communicate over the Internet, and which he need not develop himself.)

Drummond does not state that the browser is made available to the customer.

Point 3

The Final Action, page 8, first and second paragraphs, mischaracterizes Appellant's argument. Appellant **did not** argue that Drummond does not show "billing." Instead, Appellant stated that Drummond does not show the billing **as claimed**.

As to the assertion that Appellant is arguing over matter not claimed, Appellant points out that he gave an example.

EXAMPLE

Drummond's party can pay \$ 1,000 as the PTO stated in the PTO's second paragraph, for two types of advertising, such as (1) ten advertisements any time the party wants or (2) a lesser sum under certain conditions.

Thus, Appellant provided an interpretation of Drummond.

The claim in question does not read upon that interpretation. Claim 21 states "applying a charge to each advertisement based on the number of accesses [to the database]."

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That does not read on the fixed-fee payment in the interpretation of Drummond.

Thus, Appellant submitted an interpretation of Drummond, and showed that the claim did not read on that interpretation.

Stated another way, Drummond discussed billing generally. Appellant showed that this generic statement does not necessarily show the type of billing claimed.

And the PTO has not shown an interpretation of Drummond which shows the claim.

Point 4

As to the last paragraph on page 8 of the Final Action, this paragraph does not rebut Appellant's assertion in his previous Amendment, which is repeated here:

Claim 24

The Office Action cites Drummond's paragraph 121 to show this claim. However, the claim recites the entering of "descriptive fields" by a user. The undersigned attorney cannot locate that specific term in paragraph 121, nor anything synonymous. Therefore, it is requested that the "descriptive fields" be precisely identified in paragraph 121.

(Appellant's Amendment mailed March 23, 2006, page 19.)

Point 5

As to the first paragraph on page 9 of the Final Action,

Appellant points out that the claim language in question is this:

. . . storing the screened advertisement in a
database entry associated with the ATM.

The issue is "What does 'associated with the ATM' mean ?" The Specification, page 7, lines 4 - 10, and 15 - 17, provides an example. The advertisements are stored in a database. The entries for a specific ATM are stored together (that is, "associated with the ATM"), so that the advertising for a specific ATM can all be retrieved together.

Perhaps the claim should read "associated with an ID code of the ATM," but the present wording is considered clear, given the explanation given in the Specification. Appellant offers to amend the claim, if the Board directs.

Therefore, the claim language means that the advertising is stored so that the advertising for a specific ATM can be retrieved.

The Final Action asserts that, since Drummond's ATM fetches advertising from a database on the Internet, that ATM "associates" with the database, and thus the claim language is found.

In response, Appellant makes three points.

One. The Final Action "associates" the wrong things together. The Final Action states that a "databases" on the Internet is "associated" with an ATM, when the ATM links to the "database." In contrast, the claim states that the "entry" (within the

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"database") is "associated" with the ATM. The Final Action's example does not show this.

Two. In the Final Action's example, there is not really any "association" present. When an ATM fetches advertising from a database, it sends a request to its ISP, which then relays the request to a "node" on the Internet. The relaying process continues until the request reaches the database. The database then sends the requested advertising back, through the same process.

That is not "association." At least one reason is that, when the ATM makes the request, there is no connection with the database, and when the database fulfills the request, there is no connection with the ATM. The situation is not like a telephone system, wherein two parties to a conversation are connected together.

Three. The Specification, page 7, lines 4 - 10, provides an explanation of what "association" means. That explanation must govern. MPEP § 2106(II)(C) states:

Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim.

MPEP § 2111 states:

PTO applies to verbiage of the proposed claims

the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions OR OTHERWISE that may be afforded by the written description contained in applicant's specification.

Contrary to these rules, the Final Action is ascribing to the term "associate" a meaning which is different from that used in the Specification. That is not allowed.

Many words in the English language have different meanings. For example, the word "box" can mean (1) to engage in the art of fisticuffs or (2) enclose within a cardboard container.

The term "associate" may have different meanings. The meaning used in the Specification must govern.

Point 6

As to the second paragraph on page 9 of the Final Action, Appellant points out that claim 29 recites

- 1) providing a database of advertisements (Recitation 1) and
- 2) allowing a "third party" access to the database, to supply advertisements (Recitation 2).

Appellant points out that the "third party" must be a party who is **different from** the party which provides the database.

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"Third party" is a party who is different from the party which provides the database.

In the paragraph in question in the Final Action, the PTO has not shown such a different party. The PTO has only asserted that the advertiser is different from the ATM owner. But that does not show that the advertiser is different from the provider of the database holding the advertising. In fact, the provider and the advertiser are identical.

Point 7

As to the last paragraph on page 9 of the Final Action, Appellant points out that, in the phrase "single entity and its agents," the term "agents" means entities which are controlled by the "entity."

Thus, in claim 29, a "single entity and its agents"

- provides a database for storing authorized advertisements;
 - allows a third party to access the database and to transmit an advertisement thereto;
 - screens the transmitted advertisement;
 - rejects the advertisement (sometimes);
 - transmits the stored advertisement to an-ATM;
- applies a charge to an account associated with

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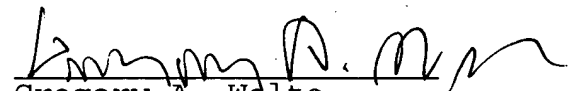
the third party.

No "single entity or its agents" performs all these actions
in the references.

CONCLUSION

Appellant requests that the Board reverse all rejections, and
pass all claims to issue.

Respectfully submitted,


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8. CLAIMS APPENDIX

16. An automated teller machine (ATM) for dispensing cash in the form of paper money to an ATM customer conducting a cash dispense transaction at the ATM and for displaying advertisements for the ATM customer to view while the ATM customer is conducting the cash dispense transaction at the ATM, the ATM comprising:

a cash dispenser for dispensing cash to an ATM customer when the customer is conducting a cash dispense transaction at the ATM;

an ATM display;

means for accessing an advertisement database to retrieve an authorized advertisement associated with the ATM; and

means for incorporating the retrieved advertisement in a screen for displaying on the ATM display to allow the ATM customer to view the screen while the ATM customer is conducting the cash dispense transaction at the ATM.

17. An ATM according to claim 16, wherein the means for incorporating the retrieved advertisement in a screen includes an ATM program for executing a Web browser.

18. An ATM according to claim 17, wherein the ATM program is

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operable to allocate screen space to the Web browser in accordance with predefined allocation times.

19. A method of operating an automated teller machine (ATM) to dispense cash in the form of paper money to an ATM customer conducting a cash dispense transaction at the ATM and to display advertisements for the ATM customer to view while the ATM customer is conducting the cash dispense transaction at the ATM, the method comprising the steps of:

dispensing cash to the ATM customer when the ATM conducts a cash dispense transaction at the ATM;

accessing a database of authorized advertisements;

retrieving from the database an authorized advertisement associated with the ATM; and

displaying the retrieved advertisement on a display of the ATM to allow the ATM customer to view the displayed advertisement while the ATM customer is conducting the cash dispense transaction at the ATM.

20. A method of supplying an advertisement for displaying on a display of an automated teller machine (ATM) which can dispense cash in the form of paper money to an ATM customer conducting a cash dispense transaction at the ATM, the method comprising the steps of:

accepting via a network an identification signal from an ATM located on the network;

accessing an advertisement database to retrieve an authorized advertisement associated with that ATM; and

transmitting the retrieved advertisement to the ATM for displaying on the display at that ATM to allow the ATM customer to view the displayed advertisement while the ATM customer is conducting the cash dispense transaction at the ATM.

21. A method according to claim 20, further comprising the steps of:

logging the number of times the advertisement database has been accessed by each ATM; and

applying a charge to each advertisement based on the number of accesses.

22. A system comprising:

an automated teller machine (ATM) which can dispense cash in the form of paper money to an ATM customer conducting a cash dispense transaction at the ATM;

an advertisement database for storing authorized advertisements; and

a server interconnected to the ATM and for accessing the advertisement database in response to a request from the ATM, to

retrieve an advertisement associated with the ATM, and to transmit the retrieved advertisement to the ATM for displaying on a display of the ATM to allow the ATM customer to view the displayed advertisement while the ATM customer is conducting the cash dispense transaction at the ATM.

23. The system of claim 22, wherein the configuration of the system is such that an authorized user is allowed to update the stored advertisements.

24. A system according to claim 22, wherein the server is configured to allow a user to enter descriptive fields relating to an advertisement.

25. A system according to claim 22, further comprising a screening system for screening each advertisement to determine if the information fulfill an acceptance criterion, and, if not, rejecting the advertisement.

26. An automated teller machine (ATM) for dispensing cash in the form of paper money to an ATM customer conducting a cash dispense transaction at the ATM and for displaying advertisements for the ATM customer to view while the ATM customer is conducting the cash dispense transaction at the ATM, the ATM comprising:

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means for connecting to a first server to authorize the cash dispense transaction;

means for connecting to a second server to retrieve an authorized advertisement associated with the ATM; and

means for displaying the authorized advertisement to an ATM customer conducting the cash dispense transaction at the ATM to allow the ATM customer to view the displayed advertisement while the ATM customer is conducting the cash dispense transaction at the ATM.

27. A method of offsetting the cost of owning an automated teller machine (ATM) which can dispense cash in the form of paper money to an ATM customer conducting a cash dispense transaction at the ATM, the method comprising the steps of:

providing a database for storing advertisements;

allowing an authorized ATM customer to access the database and to transmit an advertisement from an ATM to the database for storing therein;

screening the transmitted advertisement to ensure that it meets an acceptance criterion;

storing the screened advertisement in a database entry associated with the ATM; and

charging a fee to the ATM customer each time the advertisement is accessed by the ATM.

28. A network comprising:

a database of authorized advertisements, each advertisement having an associated display criteria;

a plurality of automated teller machines (ATM) in which each ATM can dispense cash in the form of paper money to an ATM customer conducting a cash dispense transaction at the ATM, each ATM including means for requesting an authorized advertisement from the database; and

a server interconnected to the plurality of the ATMs, the server including means for matching an authorized advertisement with each ATM based on the display criteria.

29. A method of leasing advertising space on one or more automated teller machines (ATMs) in a network of ATMs which can dispense cash in the form of paper money, the method comprising the steps of:

providing a database for storing authorized advertisements;

allowing a third party to access the database and to transmit an advertisement thereto;

screening the transmitted advertisement;

in the event of the screened advertisement meeting an acceptance criterion, storing the transmitted advertisement, and

if the advertisement fails to meet the criterion, rejecting it;
 associating display criteria with the stored
advertisement;
 transmitting the stored advertisement to any request from
an ATM fulfilling the display criteria; and
 applying a charge to an account associated with the third
party, wherein all steps are undertaken by a single entity and its
agents.

30. An advertisement brokerage system, the system comprising:
 a network of automated teller machines (ATMs) in which
each ATM can dispense cash in the form of paper money to an ATM
customer conducting a cash dispense transaction at the ATM;
 means for receiving and storing advertisement data;
 means for screening the advertisement data;
 means for applying display criteria to the advertisement
data; and
 means for transmitting the advertisement data to one or
more ATMs in accordance with the display criteria.

31. ATM according to claim 16, wherein the retrieved
advertisement is displayed while cash is being counted or staged
by the ATM.

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32. Method according to claim 19, wherein the retrieved advertisement is displayed while cash is being counted or staged by the ATM.

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9. EVIDENCE APPENDIX

None

10. RELATED PROCEEDINGS APPENDIX

None